STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-230

July 18, 2001

MAINE PUBLIC UTILITIES COMMISSION
State Universal Service Fund for Local
Exchange Carriers (Chapter 288)

ORDER ADOPTING RULE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we adopt Chapter 288, a rule that establishes the Maine Universal Service Fund (MUSF or the Fund), pursuant to the provisions of 35-A M.R.S.A. § 7104. The MUSF mechanism will allow rural local exchange carriers (LECs) that are unable to meet their allowed intrastate revenue requirement through rates primarily for local exchange, access, and other services to draw support from the Fund.

II. BACKGROUND

The Commission began the development of a USF with a Notice of Inquiry (NOI) issued on July 17, 1997 in Docket No. 97-429 and another NOI issued on October 27, 1998 in Docket Number 98-807. On February 8, 2001, the Commission issued an NOI in *Maine Public Utilities Commission, Inquiry Into Implementing a State Universal Service Fund for Local Exchange Carriers*, Docket No. 2000-181. In that Inquiry, we proposed a high-cost universal service fund similar in many respects to the Rule we adopt here. In drafting the present rule, we relied to some extent on comments submitted in the most recent inquiry. In each of the prior proceedings, the Commission proposed a process for addressing USF issues and sought comments on a series of specific questions related to implementing one or more types of USF mechanisms.

On April 3, 2001, we issued a Notice of Rulemaking (NOR) that initiated this rulemaking and set forth a proposed rule that would implement a USF for rural LECs. We received comments from the Office of the Public Advocate (OPA), Verizon Maine (Verizon), WorldCom, Inc., Sprint Communications Company, L. P. (Sprint), MaineCom and the Telephone Association of Maine (TAM). In this Order, we address the parties' comments as they relate to the various sections of the Rule we adopt.

The Rule we adopt in this Order implements a USF support mechanism for those rural LECs that cannot achieve their overall revenue requirements (as determined by the Commission in rate case proceedings) if they maintain their local exchange rates at levels deemed affordable and comparable to the rates charged in comparably-sized exchanges of Verizon, and also set their intrastate access rates in accordance with the provisions of 35-A M.R.S.A. §7101-B. A rural LEC is defined in the federal Telecommunications Act of 1996 (TelAct) at 47 U.S.C. § 153(37). The definition includes all of the independent telephone companies (ITCs) in Maine.

We refer to the support mechanism as the "High Cost USF," because it is designed to assist rural LECs that serve high cost areas. All rural ILECs are eligible to receive support from the USF, and facilities-based competitive LECs (CLECs) that serve in rural areas may receive support if the Commission determines that the CLEC is an eligible telecommunications carrier (ETC), that the rural exemption should be lifted and that the CLEC can demonstrate a need for the funding. To provide service in an area served by a rural ILEC, however, a CLEC will, as a practical matter, need an interconnection agreement with the ILEC so that traffic may be exchanged. Under the rural exemption of 47 U.S.C. § 251(f), a rural ILEC is not required to enter into an interconnection agreement unless this Commission terminates the rural exemption by a finding that a CLEC's request for interconnection services or network elements "is not unduly economically burdensome, is technically feasible, and is consistent with section 254 . . . ."

We exclude Verizon from eligibility for support from the Fund because the Rule establishes Verizon's rates for each of its rate classes as the benchmark for determining reasonable, affordable and comparable rates for the rural carriers. We have recently determined that the Alternative Form of Regulation (AFOR) for Verizon should be extended for an additional five years, and we conclude that Verizon has demonstrated the ability to maintain reasonable and affordable rates for customers in all of its exchanges (which contain a mix of high-cost and low-cost areas) within its existing rate structure. In the AFOR proceeding, we allowed Verizon to raise its local exchange rates to offset the reduction in its access rates necessitated by the provisions of 35-A M.R.S.A. § 7101-B. The increased Verizon rates will become the benchmark for the rural LECs' local rates in the Rule. Verizon, at least at this time, cannot demonstrate overall "high costs" relative to other LECs in Maine. In addition, under its AFOR, Verizon bears the risk of increased costs. Thus, it would be inconsistent with the AFOR for it to receive support from the Fund to offset cost increases.

We had intended to adopt the USF Rule prior to May 30, 2001, the date of the most recent required adjustments to intrastate access rates, pursuant to section 7101-B, and to have the high cost Maine USF in place at that time so that rural ILECs that we found needed high cost support could begin participating in the USF mechanism simultaneously with those companies' required reduction in access rates. We were not able to meet the May 30, 2001, deadline, but we will implement the provisions of the rule as soon as possible and apply it to those companies that have recently completed their required rate cases. The Commission will need to select an administrator for the Fund, and the administrator will need some time to establish the mechanisms for collecting and disbursing money. In the interim, the companies that have recently completed rate cases continue to have access rates that exceed interstate NECA 5 levels, the levels consistent with § 7101-B.

The High Cost USF is intended to accommodate policy objectives contained in State and federal statutes. Some State statutes may appear to promote competing policy goals. Under 35-A M.R.S.A. § 7101, State telecommunications policy must promote and encourage universal service, economic development and access to information services for all citizens of Maine. Section 7101-B of Title 35-A requires that intrastate access rates be adjusted periodically to a level that is less than, or equal to, interstate rates notwithstanding any other provision of law. Section 7104 requires, among other things, that the Commission "ensure that similar telecommunications services are available to consumers throughout the State at reasonably comparable rates." Section 7104 also sets forth the parameters and requirements that the Commission must follow if it decides to implement a state USF. Finally, section 7303, which prohibits mandatory local measured service, states that the Commission must "establish rates for telephone companies which will preserve traditional flat rate for local telephone service at as low a cost as possible." The Commission has discussed the interrelationship between section 7303 and the requirement of section 7101-B that access charges be reduced to interstate levels in *Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone Company d/b/a NYNEX (Reopened),* Docket No. 94-123, Order at 11-13 (March 17, 1998) and in *Maine Public Utilities Commission, Investigation into Bell Atlantic's Alternate Form of Regulation,* Docket No. 99-581, Order at 14-15 (June 25, 2001).

Two goals of the federal Telecommunications Act of 1996 (TelAct) are to promote local service competition and to encourage affordable and comparable rates. 47 U.S.C. § 254 establishes national principles for universal service and for the establishment of a USF support mechanism, whose main purpose is to provide support for high cost service areas. The TelAct requires that customers in all areas of the country have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable in function and quality and are available at reasonably comparable rates. Similarly, Maine's USF statute, 35-A M.R.S.A. § 7104(2), establishes the goal of providing similar telecommunications services throughout the State at reasonably comparable rates.

Each of the independent companies filed access rate reductions required to be in effect on May 30, 1999, and then entered into discussions with the Commission Staff, the OPA and other interested parties. Based on an analysis of each company's then-current earnings position, and the effect that reducing intrastate access rates to the NECA tariff level would have on the company's earnings, all the companies and other parties filed stipulations that the Commission approved in all cases. The stipulations for most of the companies provided, in part, that those companies would reduce their intrastate access rates to the NECA 5 tariff level on May 30, 2001. That group of companies agreed to two-way stay-outs until various dates beyond May 30, 2001. The stay-out provisions prohibited each company from filing a general rate case proceeding under Section 307, and also restricted parties to the stipulation from initiating general rate case proceedings under Section 1302. In approving the stipulations, the Commission agreed not to institute a revenue requirements proceeding prior to the termination dates of the stay-outs. Two of that group of companies were in the process of being reorganized through sales. In those cases, the stay-out provisions were related to the reorganizations as well as the rate proceedings.

Nine other companies agreed to file rate cases on August 30, 2000 to address those companies' needs that would result from access rate reductions. Finally, one company recently entered into a stipulation that reduced its rates.

Seven of the nine rural LECs that filed rate cases on August 30, 2000 have completed those rate cases, and two others are still in progress. In all of the completed cases, we have approved stipulations that phase in the resulting local rate increases, while moving the companies' intrastate access rates toward, but not as low as, the interstate rates. We have approved the stipulations as being reasonable resolutions of the cases and as not violating the principles that we adopt in the USF Rule. We will use the USF mechanism to allow each company's access rates to be adjusted, so that they meet the parity requirements contained in the access statute. We find that the rates that will result will meet the comparability and affordability standards of State and federal law.

Any rural ILEC that the Commission finds is in need of high cost support may begin participating in the USF mechanism following any required reduction in access rates on or after May 30, 2001, and after the Commission has selected the Fund Administrator and the Fund Administrator is ready to collect and disburse funds. A fund recipient must have followed the procedures set forth in the Rule, and the Commission must issue a written order establishing the amount of the support that the Company is to receive.

III. DISCUSSION OF THE RULE PROVISIONS AND COMMENTS

Under the Rule adopted herein, the Commission will determine the residual revenue requirement for each rural LEC, i.e., the revenue requirement a company cannot meet with basic local exchange service rates that are comparable to those of Verizon (or that are set at an interim level as they are phased in toward Verizon rates), access charges determined under the provisions of 35-A M.R.S.A. § 7101-B, and other intrastate revenues (e.g., for optional services). The residual revenue requirement of the rural ILECs will then be supplied through support from the High Cost USF. The Fund will be supported by an assessment based on the revenues from intrastate telecommunications services of IXCs, LECs, mobile telecommunications carriers and paging companies. A formula included in the Rule will determine the amount of each carrier's contribution to the Fund. Finally, the Rule describes how a carrier's payments into the Fund may be recovered from retail customers.

A. Eligibility and Calculation of Support Amount Required

Initially, rural ILECs that are also ETCs will be eligible for support from the Fund. To be eligible to receive high cost USF support, an ILEC must complete a rate case that is reasonably contemporaneous with initially receiving support. The rate case will establish the company's intrastate revenue requirement, based on the Commission's findings about the company's recoverable costs (net of federal USF support amounts), rate base, and a reasonable return on rate base.

During the rate design phase of each case, the Commission will determine a reasonable level for the company's basic local service and ancillary rates (e.g., for optional services), based on the affordability and comparability standards contained in Maine and federal law. The rates of Verizon Maine for exchanges having similar basic service calling areas (BSCAs), as measured in number of lines that can be called, will serve as the benchmark rate ceiling for the rural LECs; the Rule requires that local rates be increased up to that level. Any local rate increases may be phased in if the Commission finds it reasonable to do so, but the Rule permits a maximum phase in period of three years. The Commission may waive the requirement that a full rate case proceeding be conducted prior to any change in the amount of High Cost fund support payments deemed required by the ILEC. Sections 3(F) and (G) of the Rule establish the parameters for adjusting USF payments outside of a rate case.

In its comments, Verizon asserts that its local rates should not be established as the maximum local rates that the rural LECs may charge, but instead that Verizon's local rates should be the minimum rates. Verizon argues that the Commission itself has indicated in past decisions that the standards encompassed by the "affordable" and "comparable" terms do not necessarily mean identical. Verizon concludes that an ITC's rates may exceed those of Verizon and still remain affordable and comparable. Verizon claims that its customers could end up paying more for local service (through the application of a USF surcharge) in order to keep the rates of the ITCs lower than its own.

TAM asserts that Verizon's local rates should not be the benchmark for rural ILEC rates prior to receiving USF support. TAM argues that additional issues and individual company circumstances (such as the specific nature of the services provided, calling areas and the effects of price on the sustainability of rates) should be considered in setting each company's local rates, thereby allowing a rural ILEC's local rates to be set at a level lower than Verizon's. According to TAM, the Rule should not require that the ILEC's local rates mirror Verizon's (or be phased in within 3 years) before support is provided. TAM also proposes that any rate parity with Verizon should only be applied to basic telephone service and not to non-basic (i.e., optional) services, because ancillary services are non-essential and companies should be allowed to set their rates at competitive levels. In support of its position, TAM cites potential competition from wireless carriers who may bundle packages of services at rates that are lower than those that can be offered by the LECs. TAM also argues that local rate parity should not be applied to rates of business customers, because their rates already contain a subsidy toward residential rates.

In the NOR, we referred to Verizon's local exchange rates as the maximum rate benchmark that the ITCs must charge their customers, but we also stated that the rates of companies seeking USF support must be "raised to levels equal to those of Verizon." The draft rule itself used neither of these formulations. Instead, it proposed to require that recipients of USF support establish local rates that are "affordable and reasonably comparable to those of Verizon." That formulation is similar to the requirement of 35-A M.R.S.A. § 7104(2) that the Commission shall "ensure that similar telecommunications services are available to consumers throughout all areas of the State at reasonably comparable rates."[1]

In Section 3(D)(3) of the final rule, we require that the rural LEC's local basic service rates be "no less than" those of Verizon exchanges of a similar size. We do this because we believe that the rate comparability standard should be precise in order to avoid numerous debates about whether a proposed rate meets the somewhat vague "reasonably comparable" standard. We also agree with Verizon that its rates should serve as a minimum for ITC exchanges with calling areas of a similar size. The requirement applies to both residential and business local exchange rates.

We believe a rural LEC must do all it can through its own rate structure to achieve a reasonable level of revenues to meet its revenue requirement (including a reasonable return on investment) prior to receiving support from the MUSF. We must enforce the provisions of the access parity statute, and before we provide any of the companies with USF support (much of which ultimately must come from ratepayers of other carriers), the companies must take all reasonable measures to meet their revenue requirement internally.

We note that if a company presents a compelling reason to establish rates that are lower than those of Verizon, we may use the waiver provision of the Rule to allow such rates. We also note that while the Rule does not preclude rates that exceed Verizon's, we would expect that to be very rare. However, if Verizon believes that a rural ILEC's rates should exceed its own, it should intervene in that company's rate case and explain why. Verizon clearly has a sufficient interest to participate in those proceedings because it pays access charges to those companies and may be required to contribute universal service support.

Consistent with TAM's comments, the final rule will allow a USF recipient to deviate from Verizon's rate design provided that the receiving Company's local basic rates produce the same revenue overall as would Verizon's in the same exchanges. Thus, an ITC will be able to implement or preserve a rate design for reasons related to the BSCA Rule, Chapter 204, or for other reasons.

TAM also argued that the Rule should not require USF recipients to set their rates for optional services at Verizon levels. TAM argues that its member

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[1]Section 7104(2) does not mention "affordability," but other subsections of the statute require consistency with the TelAct of 1996, which in 47 U.S.C. § 254(b)(1) requires that "quality services shall be available at just, reasonable and affordable rates." In addition, the title of section 7104 is "Affordable Telephone Service."

companies face competition for these services from cellular companies that offer some or all of these services on a bundled basis with wireless calling plans. TAM admits that this form of competition is not "direct." We agree with TAM that we should not use Verizon's rates as the minimum benchmark. Market conditions may well vary in the service areas of different companies. We will, however, require that a USF recipient establish rates for optional services that maximize the contribution from those services to a company's revenue requirement, unless the company can present a compelling reason why those rates should not be set at such a level. In determining optimal rates for optional services, it is of course necessary to consider the nature of the demand for the service and the availability and price of alternatives.

In rate cases for companies seeking high cost support, intrastate access rates will be set equal to the then-current NECA interstate rates, local rates will be raised to levels that are at least equal to those of Verizon Maine for exchanges having calling areas of a similar size (unless those rates will be phased in), and rates for optional services will be set at the level designed to provide the greatest contribution to the revenue requirement. If, after those adjustments, the Commission finds that a company is not able to meet its allowed revenue requirement, the remaining deficiency will be recovered from the High Cost USF. In a company's initial rate case in which USF support is provided, a phase in of local rate increases may be employed, but the Rule requires that the company must implement local rates that are no less than those of Verizon within three years of the effective date for the initial rate increase. The OPA recommends that the time allowed for meeting the local rate parity be increased to four years to account for the recent Verizon local rate increase implemented in the AFOR proceeding and to prevent rate shock. We find that three years is sufficiently long to mitigate any potential rate shock, and we will not alter that timing requirement in the final Rule.

As discussed above, competitive LECs (CLECs) may be eligible to receive USF support. See Sections 3(A)(1) and (D). Sprint argued that competitive LECs should receive the same amount per-line as do ILECs. We decline to establish any specific formula at this time for the amount that CLECs may receive for USF support. It is simply impossible to predict the nature of competition in rural areas and whether CLECs will be able to demonstrate a need for USF support. The Rule, however, does not preclude them from attempting to make that demonstration.

The access statute requires that intrastate access rates be adjusted every two years, beginning on May 30, 1999. Changes in the basic structure and level of *interstate* access rates (that in turn, through 35-A M.R.S.A. § 7101-B, limit *intrastate* rates) are expected next in May of 2003. TAM recommended that access rate adjustments be automatically reflected in the amount of USF support provided, but we decline to so at this time, because all of Maine's rural LECs remain under rate of return regulation, and, depending on how recently a company has had a rate case, an examination of their overall earnings situation may be the most appropriate means of addressing this issue. The Rule does not require that any access revenue loss be automatically reflected in increased USF support, but Section 3(F)(1) provides the

Commission the discretion to adjust USF support payments to reflect future required access rate adjustments without conducting full rate cases.

In addition to changes in revenue caused by required changes in access charges, Section 3(F) allows the Commission to adjust USF support because of other extraneous or exogenous events or changes in regulatory policies that may cause a change in the support amount required for an individual company or for a broader group of (perhaps even all) companies. Section 3(G) states that for other reasons the Commission generally will conduct a rate proceeding prior to changing the amount of support. The Commission may waive that requirement for good cause, however. Under either Section 3(F) or 3(G),the Commission may itself initiate a proceeding to consider general changes to support levels, or any person demonstrating an interest in the funding level may request the Commission to open a proceeding.

B. Disbursements from the Fund

The Fund Administrator will make disbursements from the Fund based on the annual need of each recipient as determined by the Commission. LECs will receive payments in 12 equal monthly installments.

Each recipient company will continue to receive the same monthly USF amount until the Commission orders a change in or an end to support, by rule or order. Changes in support amounts may occur for individual companies, for a select group of companies or for all companies, but the Commission will provide the required notice and opportunity for participation by interested parties before any change is ordered.

C. The Amount of the Fund and Contributions

The Rule provides that the High Cost USF will be funded through an assessment on the intrastate retail revenues of all interexchange carriers (IXCs), local exchange carriers (LECs), mobile telecommunications carriers, and paging providers, as permitted under Section 7104.

In the NOR, we proposed that all providers of intrastate telecommunications services would be subject to assessment so that the base for contributions would be as broad as possible. Although the purpose of the Fund is to maintain affordable and comparable local exchange rates, we believe that it is appropriate to subject local service revenues themselves to assessment even though there may be some circularity of payment and benefits. All services (local, interexchange, mobile and paging) benefit from the existence of universal service and the ability of customers to call large numbers of other telecommunications subscribers.

TAM objected to the proposal and commented that initially, at least, payments into the Fund should come only from IXCs, because they are the ones receiving the benefit of lower access charges. We reject that recommendation because imposing the USF contribution responsibility only on IXCs makes contributions to the

Fund much like an access surcharge, which runs counter to the intent of section 7101-B, and because the USF statute requires that contributions be imposed in a competitively neutral manner. Given the broad base of provider revenues that will be used as the base for contributions into the Fund, we anticipate that each LEC's payment (especially those made by the rural LECs, most of whom do not have retail interexchange revenues) will be relatively small. We find that applying the contribution requirement to all retail revenue is more consistent with the intent of both the access parity and the USF statutes.

MaineCom also objected to the contribution requirement, claiming that it provides only "dark fiber" and not telecommunications services. The Rule assesses only retail revenues for intrastate telecommunications services. Equipment sales and leases (including the sales or leases made by MaineCom of fiber) and information services are not subject to assessment.

WorldCom argues that the assessment should apply to retail revenues "less payments made for access rates." WorldCom claims that "IXCs' billed revenue is a poor measure of the value actually produced by IXCs…;" that "admittedly, access rates are set above cost…;" and that "IXCs experience a distinct disadvantage in competing with LECs in the intrastate toll market." We reject WorldCom's proposal. Logically, if we exempted this particular cost (access payments) for IXCs, we should also exempt the costs that ILECs incur in producing access. The statute requires that "any requirements to a state universal service fund be nondiscriminatory and competitively neutral." 35-A M.R.S.A. § 7104(3)(D). We find that retail revenues are a reasonable measure of the "value" produced by carriers as well as a fair way to allocate the USF burden on a competitively neutral basis. Retail revenues are a fair measure of the output of carriers that is enjoyed by end-users, to whom carriers are likely to pass on their costs. We exclude wholesale revenues to avoid double assessment of activities that are essentially the same event, e.g., IXCs' access payments and LECs' access revenues.

WorldCom also argues that Section 4(G)(2) "actually assesses some interstate revenues of the IXCs." WorldCom bases its argument on the fact that Section 4(H)(2) contains an exception allowing allocation of rates or charges that apply to both interstate and intrastate service on the basis of minutes of use or some other reasonable allocation method. It suggests that such assessment is discriminatory (because it is not applied to LECs) and "likely unlawful on jurisdictional grounds." We disagree that the Rule discriminates in favor of the LECs. The provision in question, like a similar provision in Section 4(G)(3) applicable to mobile telecommunications carriers and radio paging providers, addresses the fact that many of those carriers provide both interstate and intrastate service and have flat charges or monthly minimum charges that apply on an unseparated basis to both forms of service. We are not aware that any

LECs have such charges; local service is intrastate by definition.[2] We also doubt that it would be unlawful to use all revenues as the base for apportioning the total needs of the Fund, provided that that the amounts actually collected are dedicated solely to the support of intrastate service.

WorldCom suggests that we should simply assess those revenues that it reports to the Commission as intrastate in its annual report. We do not know how WorldCom reports any charges that are applicable to both interstate and intrastate service in its annual report, but it should not exclude those revenues any more than they should be excluded from the USF assessment. Instead, WorldCom and other carriers should allocate them in some reasonable manner such as the method described in Section 4((H)(2). It is not the intent of the Rule to assess interstate revenues; that is the reason for the exception that allows allocation. We also do not intend to allow revenues that are legitimately intrastate to escape assessment. It is the IXCs that have chosen to implement charges that are not clearly applicable to either interstate or intrastate service and are therefore applicable to both. It is also the intent of the Rule to assess a reasonable portion of the revenues from those charges. WorldCom has failed to explain why the apportionment method contained in Section 4(H)(2) is unreasonable or unworkable. We therefore reject its arguments.

Because we recognize that carriers' revenues will vary over time, we require that the amount of each carrier's payment into the Fund be updated on a quarterly basis. Following the submission of comments, we surveyed a number of carriers, and nearly all indicated that quarterly reporting was already available, or could be implemented without substantial additional expense. Therefore, within a reasonable period of time after the end of each quarter (to be established by the Administrator), all carriers subject to assessment must report their intrastate revenues to the Fund Administrator, who, in turn, will establish each carrier's payment. The amount that a carrier pays each quarter will vary according to the amount of its total assessable revenues and the amount of funds needed for the MUSF. The Administrator will determine the amount of money that must be disbursed to the recipient LECs based on Commission decisions regarding individual LEC eligibility for payments from the Fund. To that amount the Administrator will add the cost of administering the fund and an additional amount to cover uncollectibles from the contributor entities. The Administrator will determine the contribution of each carrier by multiplying the carrier's revenue by the Revenue Percentage (total Fund costs) divided by total retail revenues for all carriers), the fraction described in Section 4(C).

The NOR proposed that Section 4 of the Rule would require the Administrator to bill fund contributors on a monthly basis. We noted that frequent billings would lessen any possible need for reconciliation, given that the total amount of the Fund may change at any time, as rate cases are completed or for other reasons

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[2]Some ILECs in Maine (Verizon, Pine Tree and Saco River) and probably some CLECs provide intrastate interexchange service. If they were to offer interstate as well as intrastate service, they would be subject to the provision in question.

listed in the Rule. We suggested, however, that contributors may prefer the stability of a set amount over a longer billing period (e.g., three months, six months, or annually), even though a longer period may require reconciliation. We noted that the frequency of adjustments to the total size of the Fund should decrease over time as initial rate cases are completed. We requested comments that address the optimum billing period.

All commenters that addressed this issue (other than Sprint) preferred quarterly billing. Sprint preferred the monthly billing, suggesting quarterly billing for smaller carriers. We agree with the majority of commenters that all carriers should be billed quarterly.

D. Surcharges By Carriers; Revision Of Contribution Formula

Many commenters requested that the final rule contain a specific provision that authorizes carriers to pass USF contributions on to their customers in the form of a surcharge. We do not believe that specific authorization in the Rule is legally required, as any carrier is always free to propose a surcharge in its rates filed with the Commission. Nevertheless, we believe that any surcharges should meet certain requirements, and we therefore add Section 5(B) to the Rule that authorizes and limits the level and structure of USF surcharges.

We decide that any surcharge identified on a customer's bill by a carrier subject to regulation by the Commission should not exceed the amount that a carrier, as a percentage of its revenue, contributes to the Fund. To that end, in Section 4(C), we have also recast the formula that establishes the amount that a carrier must contribute to the Fund. As revised, it states the percentage of its intrastate retail revenue (the "Revenue Percentage") that each carrier must contribute. The same Revenue Percentage applies to all carriers. The Administrator will multiply the Revenue Percentage by each carrier's reported revenues to establish the amount in dollars that a carrier must pay. Under Section 5(B), which governs the surcharge, the Revenue Percentage also serves as the cap on the percentage that a regulated carrier may impose as a surcharge on the amount billed to customers for telecommunications services .

The formula as originally proposed established each carrier's market share (the carrier's intrastate revenues divided by the total of all intrastate revenues). The market share percentage would then be multiplied by the total needs of the Fund to establish the amount that each carrier must pay. The original formulation was expressed as

$$\frac{CR}{TR} \times FC$$

with CR equal to the individual carrier's intrastate retail revenue, TR equal to the total intrastate retail revenue for all carriers; and FC equal to the Fund costs.

The revision is algebraically identical and produces the same end result: a carrier will pay the same amount under either formulation. The revised formula is:

$$\frac{FC}{TR} \times CR$$

The first factor (FC / TR) establishes the Revenue Percentage that is described above. The Revenue Percentage establishes both the percentage of revenues that carriers pay into the Fund and the maximum percentage surcharge that carriers may charge customers.

Carriers subject to the Commission's jurisdiction may impose a percentage USF surcharge on customers' bills as long as the percentage does not exceed the Revenue Percentage established by the Administrator pursuant to the formula in the Rule. A carrier must include any surcharge in its rate schedule and must state the surcharge on customer bills. The surcharge may apply to the total of the bill for intrastate telecommunications services, exclusive of other surcharges such as those for Enhanced 911 and the Maine Telecommunications Education Access Fund, which are not included in the revenues that a carrier reports to the Administrator for USF purposes.

A carrier is free to charge less than the Revenue Percentage. It may impose the surcharge on some services but not others, or on some customer classes and not others, if it wishes to do so for competitive reasons. It may not, however, make up what it forgoes on one class or service on another class or service. Thus, if a carrier decides to impose a USF surcharge on only some services or customer classes, the surcharge on those customers or services may not exceed the Revenue Percentage. Otherwise, a carrier might decide to load all of its USF costs on less competitive services and attempt to gain a competitive advantage in other services. Verizon and two independent telephone companies (ITCs) offer both local and interexchange services. As competitors in the interexchange market those carriers might wish to place all of their USF costs on local service, where they face less competition. Most competitors in the toll market, however, do not have that option, because they offer little or no local service. In addition, if Verizon placed all of its USF costs on local service, customers in its own service territory would pay substantially more toward USF than customers in the service territories of independent telephone companies that do not provide their own toll service, because many of those customers obtain toll, but not local, service from Verizon. Verizon and all other carriers may refrain from imposing a USF surcharge on toll services (or any other service or customer class), but they may not charge remaining customers more than the Revenue Percentage.

Section 5(B)(3) addresses application of the surcharge to rates or charges of an IXC, a mobile telecommunications provider or a radio-paging provider that apply on an unseparated basis to both intrastate and interstate service (e.g., minimum monthly bills, with or without a usage allowance). We discussed the problem of revenues derived from such charges and the assessment of those revenues above in our discussion of Section 4(H). That provision allows the apportionment of these revenues based on a measure such as intrastate and interstate minutes of use.

Section 5(B)(3) addresses the billing side of the same issue. It too allows for an allocation of those charges, provided that the Commission has approved the allocation method. If the Commission has approved an apportionment method for the carrier for assessment purposes, the carrier must apply the same apportionment method and measurement criterion to each customer's bill. For example, if, for assessment purposes, a carrier apportions the revenue derived from mixed intrastate-interstate charges using its total Maine intrastate and interstate minutes of use (MOUs), it must apportion any mixed charge on a customer bill using the intrastate and interstate minutes billed to that customer. (It may not apply its own aggregate intrastate-interstate MOU ratio to all mixed charges for all customers.) In the absence of an approved allocation method, a carrier may not apply the surcharge to any portion of a mixed intrastate-interstate charge.

The Rule does not permit carriers subject to the Commission's jurisdiction to impose a flat surcharge. It would be difficult or impossible for the Commission to determine whether such a charge might overcollect the amount of the carrier's costs. We believe that customers would be legitimately concerned if a carrier imposed a Commission-approved surcharge for USF that overcollected the carrier's actual costs.

The Rule does not restrict carriers subject to the Commission's jurisdiction from recovering USF costs in a manner other than the permitted surcharge, i.e., through rates for telecommunications services, provided that any such recovery is not identified as a separate surcharge in a carrier's tariff or in customer bills. ILECs may, of course, face restrictions on raising rates such as the pricing rules applicable to Verizon under the AFOR or the fact that independent ILECs may need to participate in a full revenue requirement proceeding to raise rates. For competitive carriers, the Commission's long-standing policy is that they may set rates without Commission oversight.[3] Those carriers may set rates based on their costs and their perception of competitive conditions. It would not be feasible for the Commission to determine the extent to which a competitive carrier was recovering USF costs (as opposed to other costs) in its rates for telecommunications services. If a carrier decides to recover USF costs by any means other than through the surcharge authorized in the Rule, it may not identify that recovery on bills, either as a surcharge or otherwise.

The restrictions on USF surcharges in this Rule do not apply to those carriers (radio common carriers and paging companies) whose rates we do not regulate. They are free to recover their contributions to the USF Fund in any manner they see fit, though we would refer any cases of outright misrepresentation (e.g., a "USF

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[3]The Commission may investigate any carrier's rates pursuant to the provisions of 35-A M.R.S.A. § 310, but, for competitive carriers, almost always refrains from doing so.

surcharge" line item on a customer's bill far in excess of the amount due from the carrier) to the appropriate consumer fraud enforcement agency.

35-A M.R.S.A. § 7104(3)(E) requires the Commission's Rule to require carriers to provide explicit identification on customer bills of the *contributions* that a carrier makes to the USF. Section 5(A) requires a carrier to state the amount it contributed to the Fund in the past year. The requirement that *contributions* must be identified should not be confused with the requirement of Section 5(B)(2) to identify any USF *surcharges* that the Rule permits (but does not require).

We also find that the requirement to identify contributions should logically apply to all carriers, including mobile telecommunications carriers and paging companies. Although those carriers and paging companies are not subject to the ratemaking jurisdiction of the Commission, the Commission has discretion under the statute to require providers of mobile telecommunications carriers to contribute to the Fund. It follows that if the Commission makes that decision, the provision of the statute that requires explicit identification of contributions should also apply to those carriers.

Related to our decision to recast the formula to include a Revenue Percentage is our separate decision to require that the Revenue Percentage and the amount that carriers must pay be modified quarterly. Sprint's comments suggested that because carrier revenues vary over the course of a year, it would be desirable to adjust the amount the carriers pay each month. As part of its proposal, Sprint proposed that the formula be recast as described above. Sprint also proposed, however, that the ratio that we have labeled the "Revenue Percentage" would be fixed for the year; only the carriers' own revenues would vary. Sprint proposed that the Fund's costs for the year would be estimated in advance, and that total revenue (for all carriers) would be recalculated only once each year.

We agree that changing the amount that carriers pay more often than annually makes sense because market conditions and carrier revenues do vary constantly. We believe, however, that all three factors (FC, TR and CR) should be changed quarterly. As discussed above, all commenting carriers other than Sprint preferred quarterly (rather than monthly) billing. We also will require quarterly reporting of revenues. Following the submission of comments, we sent questions to a group of the largest carriers asking if they could provide accurate quarterly revenues. All carriers who responded said that they could do so. WorldCom stated that doing so would be burdensome and costly, but did state that providing accurate quarterly revenues was possible. WorldCom did not provide any estimate of its costs. Almost all of the carriers that responded stated that they could provide revenue information within five to six weeks following the end of a quarter. Accordingly, there will be a lag of two quarters in using the reported revenues to calculate contribution amounts. Revenues for one quarter will be reported approximately six weeks after the end of that quarter; they will be used in calculating the payment amounts from contributors for the following quarter. The Administrator must attempt to use electronic methods for data collection, billing and receipts and support payments whenever possible.

Changing each of the three variables in the formula (Fund costs, carrier revenues and total revenues) on a quarterly basis makes sense because all of those factors can vary more frequently than annually. As discussed above, the Fund's requirements are likely to change more frequently than annually, particularly as ITC rate cases are concluded during the next two or three years. Changing all of the variables in the formula at the same time appears to be feasible and also maintains consistency within the formula. We have modified the proposed rule accordingly.

We will not use estimates for the Fund Costs (FC), as changing that amount on a quarterly basis should be sufficiently timely. We do recognize that rate cases may end at any time, however, and that not changing the Fund's requirements for up to three months could result in undercollection. We have introduced a degree of flexibility in the next to last sentence of Section 4(B). That sentence allows the Commission to require the Administrator to adjust the total contribution amount for the subsequent quarter upon a filing of a stipulation in a rate case, even though the Commission has not yet approved the stipulation. In the ITC rate cases recently concluded, the Commission reviewed stipulations to make initial determinations of reasonableness, but then conducted local public witness hearings prior to finally accepting the stipulations. Additional flexibility is provided by the last sentence of Section 4(B). Under that provision, the Commission may require the Administrator to collect additional revenue in a subsequent quarter if a rate case or other event listed in Section 3 occurred during the previous quarter and resulted in undercollection during that quarter.

Finally, we note that changing each of the variables each quarter means that the Revenue Percentage (which serves as the cap on the amount that carriers may set as a USF surcharge) will change quarterly. Carriers are not likely to want to change the rate page containing the surcharge four times a year, and the Commission would prefer not to receive that many tariff filings. Accordingly, Section 5(B)(3) allows a carrier to define its surcharge by reference to the Revenue Percentage that is adjusted quarterly by the Administrator. If for some reason a carrier wishes to establish a USF surcharge that is less than the Revenue Percentage, it may set the charge at some specified percentage of the amount set by the Administrator.

IV. CONCLUSION

This rulemaking was conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments on the proposed amended rule were filed with the Administrative Director by May 11, 2001. No public hearing on this matter was held, because the NOR did not establish a hearing, and no person requested one pursuant to the procedures of the Administrative Procedure Act.

In accordance with 5 M.R.S.A. § 8057-A (1), the fiscal impact of the proposed rule is expected to be relatively minor. The USF burden is spread among all intrastate telecommunications providers. The Rule provides a specific mechanism by which carriers may pass on the amounts of their contributions to their end-user customers.

The Administrative Director shall send copies of this Order and the attached rule to:

1. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

2. All telecommunication providers as defined in the statute, including mobile telecommunications carriers and radio paging service providers.

3. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

4. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, this 18th day of July, 2001.

BY ORDER OF THE COMMISSION

____
Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.